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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ISABEL G., et al., Persons Coming Under
the Juvenile Court Law.

MADERA COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

ISABEL Z.,

Defendant and Appellant.

F077939

(Super. Ct. Nos. MJP016438,
MJP016751, MJP016867,
MJP017872, MJP017910)

OPINION

APPEAL from orders of the Superior Court of Madera County. Thomas L.
Bender, Judge.

Jessica M. Ronco, under appointment by the Court of Appeal, for Defendant and
Appellant.

Regina A. Garza, County Counsel, and Miranda P. Neal and Derek Walzberg,
Deputy County Counsel, for Plaintiff and Respondent.

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On October 26, 2016, a petition was filed by the Madera County Department of Social Services (department) pursuant to Welfare and Institutions Code section 300¹ alleging that daughters Isabel G., Chloe G., and B.G. (then respectively seven, five, and four years old) were at serious risk of physical harm because their mother Isabel Z. (mother) and C.O., the biological father of the couple's son B.O. (then 23 months old), were abusing methamphetamine and engaging in multiple instances of domestic violence.² The children had been detained on October 24, 2016.³

The allegations were found true at the jurisdiction hearing on January 30, 2017. At the disposition hearing on March 23, 2017, the juvenile court ordered visitation with the children and reunification services for mother and C.O. Although mother and C.O. received services, they failed to fully participate in many of the services offered, continued to abuse methamphetamine, and continued to engage in a destructive relationship with one another. On January 4, 2018, the juvenile court adopted the social workers' reports, terminated mother's and C.O.'s reunification services, and ordered continued visitation with the children.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise designated.

² A first amended petition was filed in November 2016 with the same substantial allegations of substance abuse and domestic violence. The girls' father, Richard G., was incarcerated at the time of the detention and remained so throughout the proceedings after being convicted of felony infliction of traumatic injury on a child during the commission of corporal punishment and receiving a prison term of nine years (Pen. Code, § 273d, subd. (a)). Richard G. was bypassed for reunification services and is not a party to this appeal.

³ B.O. is not a party to this appeal. There was an amended petition filed on behalf of Baby Boy O. who was born and detained during these proceedings. The two boys were eventually placed in the custody of care providers who sought to adopt them. Because mother's assertion on appeal applies only to her daughters, we do not review the parents' relationship with or the proceedings concerning mother's sons.

At the conclusion of a section 366.26 hearing, the juvenile court found mother's three daughters adoptable and terminated her parental rights as well as those of the girls' biological father. Mother contends on appeal that, because of the bond she had formed with her three daughters, the juvenile court erred in failing to apply the beneficial parent-child relationship exception to adoption. We find no error and affirm the juvenile court's orders.

FACTS AND PROCEEDINGS

Mother's daughters had previously been removed from her custody by child protective services, but they were returned to her home. Isabel was removed in 2009. All three girls were removed from mother's custody a few years later. Between June and October 2016, the department had received six referrals involving the parents. The parents also had multiple contacts with law enforcement regarding domestic violence in 2016. When the children were detained, two of them tested positive in a hair follicle test for the presence of methamphetamine. Once this case began, Isabel, Chloe, and B.G. were initially placed in a foster home in Madera County.⁴

The girls' grandmother⁵ expressed interest in caring for the girls but was initially denied custody because she had criminal convictions. Although grandmother and her husband, from whom she was separated, had "hits" from Department of Justice reports, they were both granted "exceptions." Specifically, the department noted grandmother had received services from child protective services in the past but had been granted an "exception" for this. In February 2018, the girls were placed with grandmother and by May 2018, they appeared to be adjusting to the placement.

⁴ The girls apparently were also placed in a foster home in Fresno County.

⁵ The only relative who expressed an interest in caring for the girls was Richard G.'s mother, Sandy M., the girl's paternal grandmother. We will hereafter refer to her as "grandmother."

Although mother struggled with drug abuse, she consistently had unsupervised visits her children and was able to give them each appropriate attention during visits. The social worker's report from May 2018 noted that all three girls were emotionally attached to their mother. Isabel was satisfied with the number of visits she had with mother and wanted to live with mother once mother completed treatment. She was content, however, with grandmother providing her with "a forever home with her sisters." Chloe and B.G. were okay with their grandmother adopting them. The children were all considered adoptable. The children have remained placed outside their home since October 2016.

The social worker's report prepared in late June 2018 noted that mother continued to have positive visits with the children. The girls had been placed with grandmother since mid-February 2018 and were developmentally on track. Grandmother was willing and able to meet the girls' physical, emotional and developmental needs, to provide permanency through adoption, and to keep the children connected with their birth family. The girls have a strong relationship with their grandmother and were observed to be happy in her home. Grandmother's home was a stable, nurturing home environment that has allowed the girls to thrive. The girls have developed a parent-child relationship with grandmother. The recommended permanent plan was adoption.

Social worker Vanessa Cregar testified her recommendation was for the termination of parental rights and adoption of the children. Cregar explained the department was unable to find a family to adopt all five children together, so the girls and the boys were placed separately but visited each other monthly. The prospective adoptive parents were committed to continued visitation between all five children. The children had sibling relationships and got along well during the visits.

Cregar had no concerns about mother's visits with the children which happened twice weekly, with separate visits for the girls and the boys. Visits with mother were attended by department staff. The children recognized mother as their parent and she had a close relationship with them. During the visits with the girls, they would often talk

about school and activities. The children were happy to see mother arrive at visits and they would seek her out for comfort. Cregar explained adoption to Isabel and Chloe. Isabel said she was interested in returning to her mother's care but also that she was okay with the current frequency of visits that she had with her mother. Cregar had not seen any changes in behavior by the children either before or after the visits.

The girls were placed with grandmother. Their father, Richard G., could be released from prison "as early as next year." Cregar believed that the benefits of adoption outweighed the children's bond with their mother. She also believed the children were adoptable.

Isabel appeared for the continued hearing on July 19, 2018, and testified that she and her sisters looked forward to their visits with mother. During the visits, they played games like musical chairs and talked about school. Isabel said she would go back to live with mother if given the opportunity. Isabel said her sisters felt the same way but admitted that she never talked to them about it. Isabel still loved mother.

Isabel did not want to stay with grandmother as her "forever home" and explained she wanted to return to her mother. Isabel understood that mother was not ready to have her back at home and that it was impossible at that time to live with mother. Isabel was being taken care of and had no problems or concerns with her current placement. Isabel wanted grandmother to continue taking care of her, but wanted to be with mother, too. She also wished she could see her brothers more often. Isabel thought that guardianship sounded like a better option than adoption by grandmother.

Grandmother testified that she had been caring for the girls since mid-February 2018. Although she described the honeymoon as rough because the girls were attached to their foster mother, she was glad the girls were with her because they were with family. Each girl was individually seeing a therapist about once a week and that was going well. B.G. was difficult to deal with at first, was aggressively fighting with her sisters, and was angry, but her behavior was getting better. Chloe was "in a world of her

own” and wanted isolation. Chloe used to hide food but that behavior was improving. Grandmother described Isabel as “awesome” and as someone who loves reading and soccer. Grandmother was concerned that although Isabel was nine years old, she was parentified and took too much responsibility for her sisters. Grandmother wanted Isabel to be a nine-year-old and not to worry. This behavior was improving.

Grandmother explained that the girls made up her life. She had no problem with mother getting the girls back but grandmother wanted the girls to have a chance at life. She was willing to adopt the girls, and she was also willing to be the girls’ legal guardian. She was concerned that if mother had the girls again they could fall back into foster care. Grandmother has several adult children and three children attending public school. If something happened to her, one of her adult children would be willing to care for the girls. Grandmother believed the girls had a strong relationship with mother, loved her, and looked forward to visiting her.

Grandmother had only considered adopting the girls. Although mother loves the girls, grandmother described her as unpredictable. Grandmother felt strongly about adoption and wanted to keep the girls out of the foster care system. She did not have a problem with a guardianship, but she did not want recurring problems for the girls. Currently, they were playing soccer and plugged into church. Grandmother held them as a priority in her life and wanted them to be successful in their own lives.

Grandmother was asked if it would be better for the girls to be with mother if mother stayed away from harmful men and overcame her drug problems. She replied that the girls do not know what they want because they had been on a roller coaster with mother. Now they are in a home, getting their education which had been disrupted by different placements.

Mother testified that she was receiving treatment at the Madera Rescue Mission in an 18-month program and had never stopped seeking help. Mother preferred guardianship or long-term foster care for her children because of her close relationship

with them and she did not want her parental rights to be terminated. Recently, mother had been seeing the boys twice a week for two hours but she only saw the girls once a week. Mother was concerned the children were placed separately. Her older son was recently asking to see his sisters and Isabel often said she missed her brothers.

During mother's visits with the girls, they would hug her and tell her that they missed her. They watched movies, ate snacks, danced, and talked during the visits. The girls would talk to mother about their activities and their relationships with each other. All five children called her "mom" and looked to her for comfort. The girls made cards for her. Mother visited with the children throughout the case. Mother had been a foster child herself and she knew her children would always be waiting for her because she had always been waiting for her own mother.

The juvenile court found by clear and convincing evidence that the children were adoptable. Regarding the beneficial parent-child relationship exception to adoption, the court found mother had visited the children regularly. However, the court found that the second prong, which required that the children would benefit from a continuing relationship with mother, was outweighed by the children's need for a secure and stable home. Therefore, the court found that the beneficial parent-child relationship exception did not apply to mother or to the fathers and the court terminated parental rights.

BENEFICIAL PARENT-CHILD RELATIONSHIP EXCEPTION

Mother contends the juvenile court erred in failing to apply the beneficial parent-child relationship exception to termination of her parental rights to her daughters. We disagree.

Once reunification services are ordered terminated, the focus shifts to the needs of the children for permanency and stability. The burden is on the parent to prove changed circumstances. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If the children are likely to be adopted, adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances

provides a compelling reason for finding termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Although section 366.26, subdivision (c)(1)(B) acknowledges termination may be detrimental under specifically designated circumstances, a finding of no detriment is not a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348 (*Jasmine D.*)) It is the parent's burden to show termination would be detrimental under one of the exceptions. There is a strong preference for adoption. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The standard of appellate review has been described as the substantial evidence test. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)) To the extent we may draw inferences from the record, we may do so only as to those legitimate inferences that uphold the trial court's decision. (*In re Laura F.* (1983) 33 Cal.3d 826, 833; *In re Angelia P.* (1981) 28 Cal.3d 908, 924.) We view the evidence, contradicted or uncontradicted, in the light most favorable to the trial court's judgment and in assessing the evidence, appellate courts do not reweigh it. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) Where there is a conflict in the evidence, we indulge all reasonable inferences in support of the trial court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379; *In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1728.)

Other courts have applied the abuse of discretion test. When a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is not one of substantial evidence but whether the juvenile court abused its discretion. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) Under either the substantial evidence test or the abuse of discretion test, our analysis would be the same here. The practical differences between the two tests are insignificant as they both give deference to the juvenile court's judgment. (See *ibid.*)

For the section 366.26, subdivision (c)(1)(B)(i) exception to apply, the relationship between parent and child must promote the well-being of the child to such a degree that it

outweighs the well-being of the child in a permanent home with adoptive parents. The juvenile court balances the strength and quality of the natural parent-child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent-child relationship would deprive the child of a substantial and positive emotional attachment so that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Interactions between the natural parent and child will always confer some incidental benefit for the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, comfort, affection, and stimulation. The relationship arises from day-to-day interaction, companionship, and shared experiences. The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

A substantial evidence challenge to the juvenile court's failure to find the beneficial parental relationship or a sibling relationship cannot succeed unless the undisputed facts establish the existence of such relationships. Such a challenge amounts to a contention the undisputed facts lead to only one conclusion. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528-1529.)

The factors to consider when testing whether a parental relationship is important and beneficial include the age of the child, the portion of the child's life spent in the parent's custody, the positive or negative effect of interaction between the parent and child, and the child's particular needs. The relationship must be such that the child would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.)

There is no question that mother very much loved her daughters and they loved her in return. Mother's visits with the children were always positive and the children enjoyed their visits with her. Isabel testified that she wanted to be with her mother and

did not want grandmother's home to be her forever home. Although Isabel thought her sisters felt the same way, she admitted that she had never talked to them about these matters. Although Isabel longed to be back with mother, she admitted that she knew her mother was not yet ready to receive them back into her home. Chloe and B.G. were okay with their grandmother's home becoming their forever home.

Chloe appeared to be internalizing her emotions while B.G. was aggressively acting out her own emotions. Grandmother was concerned that Isabel had become parentified and wanted to see her be a nine-year-old. The children had not lived with mother for nearly two years at the time parental rights were terminated. Because of the trauma they had endured from their parents, all three girls were in counseling. The tumultuous life the children lived with their parents did not provide them with the care and nurturing they needed. Mother was unable to take advantage of the reunification services offered to her in a timely way so the children could live with her in a stable environment. Although mother was visiting the girls twice a week for two hours each visit, her visits had been decreased to once a week.

Although day-to-day contact is not necessarily required, it is typical. A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive some benefit from continuing the parent-child relationship during periods of visitation. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.) Mother needed to demonstrate she occupied a parental role in her children's lives resulting in a significant, positive, emotional attachment from child to parent. Here, there was little or no evidence that mother occupied this crucial role in her children's lives. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 954.) Mother bore the burden of showing more than loving contact and pleasant visits. (*Id.* at pp. 953-954.) Mother failed to show detriment or harm if the parent-child relationship were to end. (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) We agree with the department there was insufficient evidence

from mother demonstrating that the benefits of maintaining the parent-child relationship outweighed the benefits to the children of adoption.

DISPOSITION

The findings and orders of the juvenile court are affirmed.

SNAUFFER, J.

WE CONCUR:

FRANSON, Acting P.J.

SMITH, J.